

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 355

FINAL READING

Introduced by Lautenbaugh, 18.

Read first time January 15, 2009

Committee: General Affairs

A BILL

1 FOR AN ACT relating to cigar bars; to amend sections 53-101,
2 53-103, 53-124, 53-131, and 71-5730, Revised Statutes
3 Cumulative Supplement, 2008; to define cigar bar;
4 to provide for a nonrefundable application fee and
5 requirements for certain Class C liquor license
6 applications; to preempt county resolutions and city
7 ordinances relating to smoking in cigar bars; to exempt
8 cigar bars from the Nebraska Clean Indoor Air Act;
9 to harmonize provisions; to provide an operative date;
10 to repeal the original sections; and to declare an
11 emergency.

12 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 53-101, Revised Statutes Cumulative
2 Supplement, 2008, is amended to read:

3 53-101 Sections 53-101 to 53-1,122 and section 5 of this
4 act shall be known and may be cited as the Nebraska Liquor Control
5 Act.

6 Sec. 2. Section 53-103, Revised Statutes Cumulative
7 Supplement, 2008, is amended to read:

8 53-103 For purposes of the Nebraska Liquor Control Act,
9 unless the context otherwise requires:

10 (1) Alcohol means the product of distillation of any
11 fermented liquid, whether rectified or diluted, whatever the origin
12 thereof, and includes synthetic ethyl alcohol and alcohol processed
13 or sold in a gaseous form. Alcohol does not include denatured
14 alcohol or wood alcohol;

15 (2) Spirits means any beverage which contains alcohol
16 obtained by distillation, mixed with water or other substance
17 in solution, and includes brandy, rum, whiskey, gin, or other
18 spirituous liquors and such liquors when rectified, blended, or
19 otherwise mixed with alcohol or other substances;

20 (3) Wine means any alcoholic beverage obtained by the
21 fermentation of the natural contents of fruits or vegetables,
22 containing sugar, including such beverages when fortified by the
23 addition of alcohol or spirits;

24 (4) Beer means a beverage obtained by alcoholic
25 fermentation of an infusion or concoction of barley or other grain,

1 malt, and hops in water and includes, but is not limited to, beer,
2 ale, stout, lager beer, porter, and near beer;

3 (5) Alcoholic liquor includes alcohol, spirits, wine,
4 beer, and any liquid or solid, patented or not, containing alcohol,
5 spirits, wine, or beer and capable of being consumed as a beverage
6 by a human being. Alcoholic liquor also includes confections or
7 candy with alcohol content of more than one-half of one percent
8 alcohol. The act does not apply to (a) alcohol used in the
9 manufacture of denatured alcohol produced in accordance with acts
10 of Congress and regulations adopted and promulgated pursuant to
11 such acts, (b) flavoring extracts, syrups, medicinal, mechanical,
12 scientific, culinary, or toilet preparations, or food products
13 unfit for beverage purposes, but the act applies to alcoholic
14 liquor used in the manufacture, preparation, or compounding of such
15 products or confections or candy that contains more than one-half
16 of one percent alcohol, or (c) wine intended for use and used by
17 any church or religious organization for sacramental purposes;

18 (6) Near beer means beer containing less than one-half of
19 one percent of alcohol by volume;

20 (7) Original package means any bottle, flask, jug, can,
21 cask, barrel, keg, hogshead, or other receptacle or container
22 used, corked or capped, sealed, and labeled by the manufacturer of
23 alcoholic liquor to contain and to convey any alcoholic liquor;

24 (8) Manufacturer means every brewer, fermenter,
25 distiller, rectifier, winemaker, blender, processor, bottler,

1 or person who fills or refills an original package and others
2 engaged in brewing, fermenting, distilling, rectifying, or bottling
3 alcoholic liquor, including a wholly owned affiliate or duly
4 authorized agent for a manufacturer;

5 (9) Nonbeverage user means every manufacturer of any
6 of the products set forth and described in subsection (4) of
7 section 53-160, when such product contains alcoholic liquor, and
8 all laboratories, hospitals, and sanatoria using alcoholic liquor
9 for nonbeverage purposes;

10 (10) Manufacture means to distill, rectify, ferment,
11 brew, make, mix, concoct, process, blend, bottle, or fill an
12 original package with any alcoholic liquor and includes blending
13 but does not include the mixing or other preparation of drinks for
14 serving by those persons authorized and permitted in the act to
15 serve drinks for consumption on the premises where sold;

16 (11) Wholesaler means a person importing or causing to be
17 imported into the state or purchasing or causing to be purchased
18 within the state alcoholic liquor for sale or resale to retailers
19 licensed under the act, whether the business of the wholesaler is
20 conducted under the terms of a franchise or any other form of an
21 agreement with a manufacturer or manufacturers, or who has caused
22 alcoholic liquor to be imported into the state or purchased in
23 the state from a manufacturer or manufacturers and was licensed
24 to conduct such a business by the commission on May 1, 1970, or
25 has been so licensed since that date. Wholesaler does not include

1 any retailer licensed to sell alcoholic liquor for consumption off
2 the premises who sells alcoholic liquor other than beer or wine
3 to another retailer pursuant to section 53-175, except that any
4 such retailer shall obtain the required federal wholesaler's basic
5 permit and federal wholesale liquor dealer's special tax stamp.

6 Wholesaler includes a distributor, distributorship, and jobber;

7 (12) Person means any natural person, trustee,
8 corporation, partnership, or limited liability company;

9 (13) Retailer means a person who sells or offers for sale
10 alcoholic liquor for use or consumption and not for resale in any
11 form except as provided in section 53-175;

12 (14) Sell at retail and sale at retail means sale for use
13 or consumption and not for resale in any form except as provided in
14 section 53-175;

15 (15) Commission means the Nebraska Liquor Control
16 Commission;

17 (16) Sale means any transfer, exchange, or barter in any
18 manner or by any means for a consideration and includes any sale
19 made by any person, whether principal, proprietor, agent, servant,
20 or employee;

21 (17) To sell means to solicit or receive an order for, to
22 keep or expose for sale, or to keep with intent to sell;

23 (18) Restaurant means any public place (a) which is kept,
24 used, maintained, advertised, and held out to the public as a place
25 where meals are served and where meals are actually and regularly

1 served, (b) which has no sleeping accommodations, and (c) which
2 has adequate and sanitary kitchen and dining room equipment and
3 capacity and a sufficient number and kind of employees to prepare,
4 cook, and serve suitable food for its guests;

5 (19) Club means a corporation (a) which is organized
6 under the laws of this state, not for pecuniary profit, solely
7 for the promotion of some common object other than the sale or
8 consumption of alcoholic liquor, (b) which is kept, used, and
9 maintained by its members through the payment of annual dues, (c)
10 which owns, hires, or leases a building or space in a building
11 suitable and adequate for the reasonable and comfortable use and
12 accommodation of its members and their guests, and (d) which
13 has suitable and adequate kitchen and dining room space and
14 equipment and a sufficient number of servants and employees for
15 cooking, preparing, and serving food and meals for its members
16 and their guests. The affairs and management of such club shall
17 be conducted by a board of directors, executive committee, or
18 similar body chosen by the members at their annual meeting, and
19 no member, officer, agent, or employee of the club shall be paid
20 or shall directly or indirectly receive, in the form of salary or
21 other compensation, any profits from the distribution or sale of
22 alcoholic liquor to the club or the members of the club or its
23 guests introduced by members other than any salary fixed and voted
24 at any annual meeting by the members or by the governing body of
25 the club out of the general revenue of the club;

1 (20) Hotel means any building or other structure (a)
2 which is kept, used, maintained, advertised, and held out to
3 the public to be a place where food is actually served and
4 consumed and sleeping accommodations are offered for adequate
5 pay to travelers and guests, whether transient, permanent, or
6 residential, (b) in which twenty-five or more rooms are used for
7 the sleeping accommodations of such guests, and (c) which has one
8 or more public dining rooms where meals are served to such guests,
9 such sleeping accommodations and dining rooms being conducted in
10 the same buildings in connection therewith and such building or
11 buildings or structure or structures being provided with adequate
12 and sanitary kitchen and dining room equipment and capacity;

13 (21) Nonprofit corporation means any corporation
14 organized under the laws of this state, not for profit, which has
15 been exempted from the payment of federal income taxes;

16 (22) Minor means any person, male or female, under
17 twenty-one years of age, regardless of marital status;

18 (23) Brand means alcoholic liquor identified as the
19 product of a specific manufacturer;

20 (24) Franchise or agreement, with reference to the
21 relationship between a manufacturer and wholesaler, includes one or
22 more of the following: (a) A commercial relationship of a definite
23 duration or continuing indefinite duration which is not required
24 to be in writing; (b) a relationship by which the wholesaler is
25 granted the right to offer and sell the manufacturer's brands by

1 the manufacturer; (c) a relationship by which the franchise, as an
2 independent business, constitutes a component of the manufacturer's
3 distribution system; (d) a relationship by which the operation
4 of the wholesaler's business is substantially associated with
5 the manufacturer's brand, advertising, or other commercial symbol
6 designating the manufacturer; and (e) a relationship by which the
7 operation of the wholesaler's business is substantially reliant on
8 the manufacturer for the continued supply of beer;

9 (25) Territory or sales territory means the wholesaler's
10 area of sales responsibility for the brand or brands of the
11 manufacturer;

12 (26) Suspend means to cause a temporary interruption of
13 all rights and privileges of a license;

14 (27) Cancel means to discontinue all rights and
15 privileges of a license;

16 (28) Revoke means to permanently void and recall all
17 rights and privileges of a license;

18 (29) Generic label means a label which is not protected
19 by a registered trademark, either in whole or in part, or to
20 which no person has acquired a right pursuant to state or federal
21 statutory or common law;

22 (30) Private label means a label which the purchasing
23 wholesaler or retailer has protected, in whole or in part, by
24 a trademark registration or which the purchasing wholesaler or
25 retailer has otherwise protected pursuant to state or federal

1 statutory or common law;

2 (31) Farm winery means any enterprise which produces and
3 sells wines produced from grapes, other fruit, or other suitable
4 agricultural products of which at least seventy-five percent of
5 the finished product is grown in this state or which meets the
6 requirements of section 53-123.13;

7 (32) Campus, as it pertains to the southern boundary of
8 the main campus of the University of Nebraska-Lincoln, means the
9 south right-of-way line of R Street and abandoned R Street from
10 10th to 17th streets;

11 (33) Brewpub means any restaurant or hotel which produces
12 on its premises a maximum of ten thousand barrels of beer per year;

13 (34) Manager means a person appointed by a corporation to
14 oversee the daily operation of the business licensed in Nebraska. A
15 manager shall meet all the requirements of the act as though he or
16 she were the applicant, except for residency and citizenship;

17 (35) Shipping license means a license granted pursuant to
18 section 53-123.15;

19 (36) Sampling means consumption on the premises of a
20 retail licensee of not more than five samples of one fluid ounce or
21 less of alcoholic liquor by the same person in a twenty-four-hour
22 period;

23 (37) Microbrewery means any small brewery producing a
24 maximum of ten thousand barrels of beer per year;

25 (38) Craft brewery means a brewpub or a microbrewery;

1 (39) Local governing body means (a) the city council or
2 village board of trustees of a city or village within which the
3 licensed premises are located or (b) if the licensed premises are
4 not within the corporate limits of a city or village, the county
5 board of the county within which the licensed premises are located;

6 (40) Consume means knowingly and intentionally drinking
7 or otherwise ingesting alcoholic liquor; ~~and~~

8 (41) Microdistillery means a distillery located in
9 Nebraska that is licensed to distill liquor on the premises of the
10 distillery licensee and produces ten thousand or fewer gallons of
11 liquor annually; ~~and-~~

12 (42) Cigar bar means an establishment operated by a
13 holder of a Class C liquor license which:

14 (a) Does not sell food;

15 (b) In addition to selling alcohol, annually receives ten
16 percent or more of its gross revenue from the sale of cigars and
17 other tobacco products and tobacco-related products, except from
18 the sale of cigarettes as defined in section 69-2702. A cigar bar
19 shall not discount alcohol if sold in combination with cigars or
20 other tobacco products and tobacco-related products;

21 (c) Has a walk-in humidor on the premises; and

22 (d) Does not permit the smoking of cigarettes.

23 Sec. 3. Section 53-124, Revised Statutes Cumulative
24 Supplement, 2008, is amended to read:

25 53-124 At the time application is made to the commission

1 for a license of any type, the applicant shall pay the fee provided
2 in this section and, if the applicant is an individual, provide the
3 applicant's social security number. The fees for annual licenses
4 finally issued by the commission shall be as follows:

5 (1) (a) For a license to manufacture alcohol and
6 spirits.....\$1,000.00;

7 (b) For a license to operate a
8 microdistillery.....\$250.00;

9 (2) For a license to manufacture beer and wine or to
10 operate a farm winery or craft brewery:

11 (a) Manufacture of beer, excluding beer produced by a
12 craft brewery:

13 (i) 1 to 100 barrel daily capacity, or any part
14 thereof.....\$100.00

15 (ii) 100 to 150 barrel daily capacity.....200.00

16 (iii) 150 to 200 barrel daily capacity.....350.00

17 (iv) 200 to 300 barrel daily capacity.....500.00

18 (v) 300 to 400 barrel daily capacity.....650.00

19 (vi) 400 to 500 barrel daily capacity.....700.00

20 (vii) 500 barrel daily capacity, or more.....800.00;

21 (b) Operation of a craft brewery.....\$250.00;

22 (c) Manufacture of wines.....\$250.00;

23 (d) Operation of a farm winery.....\$250.00.

24 For purposes of subdivision (2) (a) of this section, daily
25 capacity shall mean the average daily barrel production for the

1 previous twelve months of manufacturing operation. If no such
2 basis for comparison exists, the manufacturing licensee shall pay
3 in advance for the first year's operation a fee of five hundred
4 dollars;

5 (3) Alcoholic liquor wholesale license, for the first and
6 each additional wholesale place of business operated in this state
7 by the same licensee and wholesaling alcoholic liquor, except beer
8 and wines produced from farm wineries.....\$750.00;

9 (4) Beer wholesale license, for the first and each
10 additional wholesale place of business operated in this state by
11 the same licensee and wholesaling beer only.....\$500.00;

12 (5) For a retail license:

13 (a) Class A: Beer only except for craft breweries, for
14 consumption on the premises, the sum of one hundred dollars;

15 (b) Class B: Beer only except for craft breweries, for
16 consumption off the premises, sales in the original packages only,
17 the sum of one hundred dollars;

18 (c) Class C: Alcoholic liquor, for consumption on the
19 premises and off the premises, sales in original packages only,
20 the sum of three hundred dollars, except for farm winery,
21 microdistillery, or craft brewery sales outlets. If the applicant
22 is making application to operate a cigar bar, the initial,
23 nonrefundable application fee shall be one thousand dollars, the
24 annual fee thereafter shall be as specified in this subdivision,
25 and the application shall meet the requirements of section 53-131.

1 If a Class C license is held by a nonprofit corporation, it shall
 2 be restricted to consumption on the premises only. A Class C
 3 license may have a sampling designation restricting consumption on
 4 the premises to sampling, but such designation shall not affect
 5 sales for consumption off the premises under such license;

6 (d) Class D: Alcoholic liquor, including beer, for
 7 consumption off the premises, sales in the original packages only,
 8 except as provided in subsection (2) of section 53-123.04, the sum
 9 of two hundred dollars, except for farm winery, microdistillery, or
 10 craft brewery sales outlets; and

11 (e) Class I: Alcoholic liquor, for consumption on the
 12 premises, the sum of two hundred fifty dollars, except for farm
 13 winery, microdistillery, or craft brewery sales outlets.

14 All applicable license fees shall be paid by the
 15 applicant or licensee directly to the city or village treasurer in
 16 the case of premises located inside the corporate limits of a city
 17 or village and directly to the county treasurer in the case of
 18 premises located outside the corporate limits of a city or village;

19 (6) For a railroad license.....\$100.00 and \$1.00 for each
 20 duplicate;

21 (7) For a boat license.....\$50.00;

22 (8) For a nonbeverage user's license:

23 Class 1.....\$5.00

24 Class 2.....25.00

25 Class 3.....50.00

1 Class 4.....100.00

2 Class 5.....250.00;

3 (9) For an airline license.....\$100.00 and \$1.00 for each
4 duplicate;

5 (10) For a shipping license, except a shipping license
6 issued pursuant to subsection (4) of section 53-123.15.....\$200.00;
7 and

8 (11) For a shipping license issued pursuant to subsection
9 (4) of section 53-123.15.....\$500.00.

10 The license year, unless otherwise provided in the
11 Nebraska Liquor Control Act, shall commence on May 1 of each
12 year and shall end on the following April 30, except that the
13 license year for a Class C license shall commence on November 1
14 of each year and shall end on the following October 31. During
15 the license year, no license shall be issued for a sum less than
16 the amount of the annual license fee as fixed in this section,
17 regardless of the time when the application for such license has
18 been made, except that (a) when there is a purchase of an existing
19 licensed business and a new license of the same class is issued or
20 (b) upon the issuance of a new license for a location which has
21 not been previously licensed, the license fee and occupation taxes
22 shall be prorated on a quarterly basis as of the date of issuance.

23 Sec. 4. Section 53-131, Revised Statutes Cumulative
24 Supplement, 2008, is amended to read:

25 53-131 (1) Any person desiring to obtain a new license

1 to sell alcoholic liquor at retail, a craft brewery license, or a
2 microdistillery license shall file with the commission:

3 (a) An application in triplicate original upon forms
4 the commission prescribes, including the information required by
5 subsection (3) of this section for an application to operate a
6 cigar bar;

7 (b) The license fee if under section 53-124 such fee
8 is payable to the commission, which fee shall be returned to
9 the applicant if the application is denied, except that if the
10 applicant is making application to operate a cigar bar, the initial
11 application fee is nonrefundable as provided in subdivision (5) (c)
12 of section 53-124; and

13 (c) The state registration fee in the sum of forty-five
14 dollars.

15 (2) The commission shall notify, by registered or
16 certified mail, return receipt requested with postage prepaid, (a)
17 the clerk of the city or village in which such license is sought or
18 (b) if the license sought is not sought within a city or village,
19 the county clerk of the county in which such license is sought, of
20 the receipt of the application and shall enclose one copy of the
21 application with the notice. No such license shall be issued or
22 denied by the commission until the expiration of the time allowed
23 for the receipt of a recommendation of denial or an objection
24 requiring a hearing under subdivision (1)(a) or (b) of section
25 53-133. During the period of forty-five days after the date of

1 receiving such application from the commission, the local governing
2 body of such city, village, or county may make and submit to the
3 commission recommendations relative to the granting or refusal to
4 grant such license to the applicant.

5 (3) For an application to operate a cigar bar, the
6 application shall include proof of the cigar bar's annual gross
7 revenue as requested by the commission and such other information
8 as requested by the commission to establish the intent to operate
9 as a cigar bar. The commission may adopt and promulgate rules and
10 regulations to regulate cigar bars.

11 Sec. 5. No county resolution or city ordinance that
12 prohibits smoking in indoor areas shall apply to cigar bars.

13 Sec. 6. Section 71-5730, Revised Statutes Cumulative
14 Supplement, 2008, is amended to read:

15 71-5730 The following indoor areas are exempt from
16 section 71-5729:

17 (1) Guestrooms and suites that are rented to guests and
18 are designated as smoking rooms, except that not more than twenty
19 percent of rooms rented to guests in an establishment may be
20 designated as smoking rooms. All smoking rooms on the same floor
21 shall be contiguous, and smoke from such rooms shall not infiltrate
22 into areas where smoking is prohibited under the Nebraska Clean
23 Indoor Air Act;

24 (2) Indoor areas used in connection with a research
25 study on the health effects of smoking conducted in a scientific

1 or analytical laboratory under state or federal law or at a
2 college or university approved by the Coordinating Commission for
3 Postsecondary Education; ~~and~~

4 (3) Tobacco retail outlets; ~~and-~~

5 (4) Cigar bars as defined in section 53-103.

6 Sec. 7. This act becomes operative on June 1, 2009.

7 Sec. 8. Original sections 53-101, 53-103, 53-124, 53-131,
8 and 71-5730, Revised Statutes Cumulative Supplement, 2008, are
9 repealed.

10 Sec. 9. Since an emergency exists, this act takes effect
11 when passed and approved according to law.